

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3645 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

GULAM HUSEN ALIAS

Versus

COMMISSIONER OF POLICE

Appearance:

MR SATISH R PATEL for Petitioner

SERVED for Respondent No. 1

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 22/10/96

ORAL JUDGEMENT

This Special Civil Application is directed against detention order dated 24th April, 1996 passed by the Police Commissioner, Ahmedabad city detaining the petitioner under the provisions of Gujarat Prevention of Anti-social Activities Act, 1985. The detention order was executed on the same day i.e. on

24th April, 1996 and since then the petitioner is under detention lodged at Rajkot Jail, Rajkot.

2. The Special Civil Application was filed on 14th May, 1996 and on 15th May, 1996 Rule returnable for 24th June, 1996 was issued. So far no reply has been filed on behalf of the respondents nor any affidavit in reply has been filed by the detaining authority.

3. The grounds enclosed with the detention order show that four criminal cases were registered against the petitioner under Prohibition Act in which quantity of country liquor from 5 litres to 38 litres were seized and the matters were pending police investigation at the time when the detention order was passed. After noticing allegations with regard to these four cases, the detaining authority has referred to the Latthakand with which the petitioner is not concerned. The detaining authority has also referred to two incidents dated 30th March, 1996 and 3rd April, 1996 with regard to which witnesses have deposed that the petitioner was engaged in unauthorised liquor business, was beating witnesses, using weapons and had created an atmosphere of terror disturbing routine life. He was beating innocent persons. But the detaining authority has also noted that out of the petitioner's fear, the witnesses, requested that their names may be kept secret and accordingly, the provisions of section 9(2) of the PASA Act were invoked. The detaining authority has found that the petitioner was a bootlegger and was engaged in anti-social activities and was engaged in the business of unauthorised liquor. of foreign liquor. It has also been noticed by the detaining authority that in order to restrain the petitioner from continuing his anti-social activities, other proceedings of externment etc. were not sufficient accordingly, the detention order was passed. Although the detention order has been challenged on several grounds, at the time of arguments, learned counsel for the petitioner kept his arguments confined to the question that it was not a case of breach of public order and even if the allegations and the material as has been used against the petitioner by the detaining authority is taken into consideration, it may amount to a case of breach of law and order and therefore, the detention order cannot be sustained.

4. For the detailed reasons stated in the decision dated 4th October, 1996 rendered by this Court, in Special Civil Application No. 3879 of 1996, it is clear that the material as has been used in the present case even if taken to be true, may at the most make out a

case of breach of law and order and there is no question of breach of public order. In view of the reasons contained in the aforesaid decision, the present impugned detention order cannot be sustained in the eye of law.

5. Accordingly, the Special Civil Application is allowed. The impugned order dated 24th April, 1996 passed by the Police Commissioner, Ahmedabad city is quashed and set aside. The petitioner's detention is declared to be illegal. The respondents are directed to release the petitioner and set him at liberty forthwith if not required in any other case. Rule is accordingly made absolute.